STATE OF MICHIGAN

COURT OF APPEALS

STANDARD FEDERAL BANK,

Plaintiff/Counter-Defendant-Appellee/Cross-Appellant,

v

MARY WILLIAMS, DALE E. WILLIAMS, FARMERS STATE BANK of ALMA,

Defendants,

and

MICHAEL MCINERNEY,

Defendant/Counter-Plaintiff-Appellant/Cross-Appellee.

UNPUBLISHED
August 17, 2006

No. 259941
Gratiot Circuit Court
LC No. 02-007796-CK

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this case involving liability for a dishonored check, defendant Michael McInerney appeals as of right the trial court's grant of summary disposition and entry of judgment in favor of plaintiff Standard Federal Bank on Standard Federal's claim that McInerney was liable as an endorser under MCL 440.3415. Standard Federal also cross-appeals as of right the trial court's grant of summary disposition in favor of McInerney on Standard Federal's claim of unjust enrichment. We affirm.[1]

In August 2002, McInerney settled a personal injury lawsuit on behalf of his clients, Dale and Mary Williams.[2] In that same month, McInerney issued a check for $350,000 to the

[1] Defendants Mary Williams, Dale E. Williams, and Farmers State Bank of Alma are not parties to this appeal.

[2] Unless otherwise noted, all events referred to took place in 2002.

Williams to cover their share of the settlement proceeds (the "settlement check"). The settlement check was drawn on McInerney's Interest on Lawyer Trust Account (IOLTA) with Standard Federal.[3] However, the Williams did not immediately deposit the settlement check. Instead, at some point thereafter, the Williams authorized McInerney to invest their share of the settlement money with Pupler Distributing Company (Pupler).[4] Although the Williams had instructed McInerney to invest their portion of the settlement money, they still retained the settlement check.

Mary Williams testified that, in October, she told McInerney that she and her husband could no longer invest with Pupler and that she was planning on depositing the settlement check. Mary stated that McInerney told her that he needed to go over his accounts before she cashed the settlement check. Mary further testified that, on Friday, November 15, McInerney called her and said that he would be depositing a check from Pupler (the "Pupler check") into his IOLTA account with Standard Federal to cover the settlement check. She said McInerney told her that she would have to wait until the Pupler check cleared before she could cash the settlement check and that he would let her know when that occurred.

McInerney said he went to Standard Federal's Monroe branch sometime after 3 p.m. on Friday, November 15 and deposited the Pupler check, which was written for $349,000, into his IOLTA account. Prior to depositing the Pupler check, McInerney stated that he told the bank's branch manager that, based on rumors he had heard regarding Pupler, he was concerned that the check might not be good. McInerney stated that the manager told him to go ahead and deposit the check.

At 7:18 a.m. on Monday, November 18, McInerney called the bank to inquire about the funds in his IOLTA account. A bank representative told McInerney that the funds deposited on Friday were available. Later that morning, McInerney said he called Mary and told her that the settlement check was "good." Mary testified that McInerney suggested that she take the check to Standard Federal because his account was with that bank. On the same day, Mary said she went to a Standard Federal branch in Alma and negotiated the settlement check.

At 5:23 p.m. Eastern Standard Time on Tuesday, November 19, Standard Federal received notice through an automated system that the Pupler check was being returned unpaid. On Thursday, November 21, Standard Federal informed McInerney that the Pupler check had been dishonored. McInerney testified that, not long after the Pupler check was dishonored, a representative from Standard Federal asked him to "make this check good." However, McInerney refused to pay Standard Federal any money for the dishonored check.

---

[3] On its face, the settlement check purports to be drawn on Michigan National Bank. However, Standard Federal acquired Michigan National Bank in April 2001.

[4] Unfortunately for the various parties to this appeal, Pupler was actually a fraudulent Ponzi scheme that was in the midst of unraveling. For descriptions of the Pupler investment scheme, see *Wellman v Bank One, NA*, unpublished opinion per curiam of the Court of Appeals, issued September 20, 2005 (Docket No. 253996) and *Scalici v Bank One, NA*, unpublished opinion per curiam of the Court of Appeals, issued September 20, 2005 (Docket No. 254632).

Standard Federal subsequently sued McInerney, the Williams and Farmers State Bank of Alma under various theories. Count I of Standard Federal's amended complaint alleged that McInerney was liable for the face amount of the settlement check as a drawer under Michigan's Uniform Commercial Code (MUCC). See MCL 440.3414. Count II alleged a claim against McInerney for unjust enrichment and count III claimed that McInerney was liable under the MUCC as an endorser of the Pupler check. See MCL 440.3415. Finally, under counts IV through VI, Standard Federal alleged various claims against the Williams.

Both Standard Federal and McInerney moved for summary disposition under MCR 2.116(C)(10).[5] After oral arguments, the trial court determined that McInerney could not be liable as the drawer of the settlement check because the check was ultimately accepted.[6] The trial court also determined that McInerney could not be held liable under an unjust enrichment theory. However, the trial court determined that McInerney received proper notice of dishonor for the Pupler check and, therefore, was liable as an endorser. See MCL 440.3415(1). Based on these determinations, the trial court entered an order granting McInerney's motion for summary disposition of counts I and II, but granted summary disposition and entered judgment in favor of Standard Federal on count III. These appeals followed.

McInerney first argues that the trial court erred when it granted summary disposition in favor of Standard Federal on its claim that McInerney was liable as an endorser of the Pupler check. Specifically, McInerney contends that Standard Federal failed to give him notice that the Pupler check had been dishonored within the time limit set by the MUCC. Therefore, McInerney further contends, he cannot be held liable as an endorser. We disagree.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Zsigo v Hurley Medical Center*, 475 Mich 215, 220; 716 NW2d 220 (2006). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Cawood v Rainbow Rehab Ctrs, Inc*, 269 Mich App 116, 119; 711 NW2d 754 (2005). Summary disposition is appropriate under MCR 2.116(C)(10) where "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When considering whether there is a genuine issue of material fact, this Court will consider the affidavits, pleadings, depositions, admissions and other evidence in the light most favorable to the party opposing the motion. *Zsigo*, *supra* at 220.

This case also involves interpretation of the MUCC's statutory provisions. Statutory interpretation is a matter of law, which this Court reviews de novo. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548; 685 NW2d 275 (2004). This Court begins the interpretation of a statute by examining the language of the statute itself. *Macomb Co Prosecutor v Murphy*, 464

---

[5] Defendant Farmers State Bank of Alma was earlier dismissed by stipulation of the parties. The trial court also granted defendants Williams' motion for summary disposition prior to the motions at issue. Hence, at the time of these motions, the only remaining parties were Standard Federal and McInerney.

[6] See MCL 440.3414(3).

Mich 149, 158; 627 NW2d 247 (2001). The statute should be read in context to determine if an ambiguity exists. *Id.* If the language is not ambiguous, this Court will not construe it, but rather will enforce it as written. *Id.*

The Pupler check is a negotiable instrument subject to Article 3 of the MUCC. See MCL 440.3102(1) and MCL 440.3104(1). When McInerney deposited the Pupler check into his IOLTA account, he endorsed the check. See MCL 440.3201(2). By endorsing the check, McInerney obligated himself to "pay the amount due on the instrument" to any person entitled to enforce the instrument should the check be dishonored. MCL 440.3415(1). However, an endorser is entitled to notice of dishonor of the instrument, see MCL 440.3503(1), and if notice of dishonor is not made in compliance with MCL 440.3503, "the liability of the endorser under [MCL 440.3415(1)] is discharged." MCL 440.3415(3).[7] Under MCL 440.3503(3), "with respect to an instrument taken for collection by a collecting bank," notice of dishonor must be given "by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument."

There is no dispute that Standard Federal received notice through its automated system that the Pupler check had been dishonored at 5:23 p.m., Eastern Time, on Tuesday, November 19. Further, it is undisputed that Standard Federal notified McInerney that the Pupler check had been dishonored by Thursday, November 21.[8] However, the parties dispute the timeliness of the notice under MCL 440.3503(3). McInerney contends that, because Standard Federal received notice that the Pupler check had been dishonored during the banking day on Tuesday, it only had until midnight on Wednesday to give him notice of dishonor. In contrast, Standard Federal argues that it did not receive notice that the Pupler check had been dishonored until after the close of the banking day on Tuesday and, therefore, the notice must be treated as having been made on the following banking day. Consequently, Standard Federal continues, it had until midnight of Thursday to give McInerney notice of dishonor. We agree with Standard Federal.

As already noted, in order to meet the notice requirements of MCL 440.3503(3), Standard Federal had to provide McInerney with notice that the Pupler check had been dishonored "before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument." The MUCC defines "banking day" to mean "the *part* of a day on which a bank is open to the public for carrying on substantially all of its banking functions." MCL 440.4104(1)(c) (emphasis added). This language clearly contemplates that a banking day might be less than 24 hours. See *Oak Brook Bank v Northern Trust Co*, 256 F3d 638, 641 (CA 7, 2001) (interpreting the definition of "banking day" found in Regulation CC, see 12 CFR

---

[7] This is in contrast to a bank's right to revoke settlement, charge back the amount of any credit or obtain a refund from its customer, which may be done even if the bank fails to give timely notice. See MCL 440.4214(1); see also *Appliance Buyers Credit Corp v Prospect Nat'l Bank of Peoria*, 708 F2d 290 (CA 7, 1983).

[8] "Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted." MCL 440.3503(2).

229.2(f), which the court noted was materially identical to the definition stated in the UCC).[9] Because the midnight deadline is measured from "the banking day *on which the bank receives notice*," in order to trigger the midnight deadline, the notice must arrive during the period of time that constitutes the applicable banking day. MCL 440.3503(3) (emphasis added) Where notice is received after the close of the banking day, the notice will be deemed to have been made during the next banking day. Consequently, we must determine whether Standard Federal received notice that the Pupler check had been dishonored within that part of the day that constituted the applicable banking day.

Although McInerney concedes that Standard Federal did not receive notice that the Pupler check had been dishonored until after the 5:00 p.m. closing time for the branch where he deposited the Pupler check, he nevertheless argues that the notice arrived during Standard Federal's banking day. McInerney notes that at least one other branch in the region was still open at 5:23 p.m. In addition, McInerney presented evidence that Standard Federal provides significant banking opportunities to the public through its Automatic Teller Machines (ATM), night depositories, and telephone and Internet banking services. The provision of these services, McInerney contends, creates a question of fact or establishes as a matter of law that Standard Federal was "open to the public for carrying on substantially all of its banking functions" for the entire day in question.[10] We do not agree.

First, we disagree with McInerney's contention that whether a particular day is a banking day within the meaning of MCL 440.4104(1)(c) is a question of fact for the jury. Where the parties dispute the nature and extent of the services provided or the time period within which a particular service is available, those questions are to be determined by the finder of fact. However, where the facts are not in dispute, or where the disputed facts are not material to determining whether and to what extent a particular day was a banking day, the legal import of the facts are a question of law for the trial court. See *United Bank of Crete-Steger v Gainer Bank, N.A.*, 874 F2d 475, 480 (CA 7, 1989) (noting that it would "'unacceptably disrupt commercial relations to put to a jury, case by case, the question whether a given day was a 'banking day.'"), quoting *Merrill Lynch, Pierce, Fenner and Smith, Inc. v Devon Bank*, 832 F2d 1005, 1007 (CA 7, 1987). Because the relevant facts in the present case are not disputed, it was appropriate for the trial court to determine, as a matter of law, whether the notice sent to Standard Federal arrived after the close of the applicable banking day on Tuesday, November 19.

Second, we do not agree that the applicable banking day must be determined by reference to the hours of operation and financial services provided by Standard Federal as a whole. Under MCL 440.4107, "[a] branch or separate office of a bank is a separate bank for the purpose of computing the time within which . . . notices or orders shall be given under this article and under

---

[9] This is also consistent with MCL 440.4108(2), which states that an "item or deposit of money received on any day after a cut-off hour so fixed or *after the close of the banking day* may be treated as being received at the opening of the next banking day." (emphasis added).

[10] Indeed, McInerney suggests that, based on these services, this Court should conclude that Standard Federal's banking day is 24 hours per day every day of the year.

article 3." Hence, whether and to what extent Tuesday, November 19 was a "banking day" must be ascertained by reference to the hours of operation and services provided by the branch or office where the deposit occurred.[11] Because McInerney deposited the Pupler check at Standard Federal's Monroe branch, whether and to what extent Tuesday, November 19 was a banking day must be determined from the Monroe branch's hours of operation and available banking services. Accordingly, the hours of operation and banking services provided by other Standard Federal branches or through Standard Federal's central telephone and Internet banking offices are irrelevant.

It is undisputed that the Monroe branch closed its doors at 5:00 p.m. on Tuesday, November 19. Therefore, the branch itself was not "open to the public" for the provision of banking services. MCL 440.4104(1)(c). Furthermore, to the extent that the Monroe branch may have offered limited services to the public after 5:00 p.m. through an ATM or night depository, we conclude that those services did not constitute "substantially all" of the Monroe branch's banking functions. See *United Bank of Crete-Steger*, *supra* at 479-480 (holding that accepting deposits and permitting withdrawals, as well as other limited banking services, did not constitute substantially all of a bank's banking functions). Therefore, the applicable banking day for purposes of the notice required under MCL 440.3503(3) ended at 5:00 p.m. on Tuesday, November 19.[12] Because Standard Federal received notice that the Pupler check had been dishonored after the close of the applicable banking day, the notice is deemed to have been made during the next banking day, which was Wednesday, November 20. Hence, Standard Federal had until midnight on Thursday, November 21 to notify McInerney that the Pupler check had been dishonored. Consequently, Standard Federal gave timely notice when it informed McInerney that the Pupler check had been dishonored on Thursday, November 21.

The trial court did not err when it concluded that, as an endorser, McInerney was liable to Standard Federal for the amount due on the Pupler check. Therefore, the trial court properly granted judgment in favor of Standard Federal on that basis. Finally, because of our resolution of this issue, we decline to address Standard Federal's claim that the trial court erred when it

---

[11] Although the branch is treated as a separate bank for determining the applicable banking day, receipt of notice of dishonor at a central processing center will be sufficient to trigger the running of the midnight deadline if it occurs within the branch's banking day. See *Chrysler Credit Corp v First Nat'l Bank & Trust Co of Washington*, 582 F Supp 1436, 1439-1440 (WD Pa, 1984), aff'd 746 F2d 200 (CA 3, 1984); see also 12 CFR 229.26(b). Likewise, a central office may provide the requisite notice to the endorser on behalf of the branch. See MCL 440.3503(2).

[12] We note that the parties do not contend that the applicable banking day or notice provisions were varied by agreement. See MCL 440.4103(1). Therefore, the default rules of the MUCC apply.

determined that Standard Federal was not entitled to relief under the alternate basis that McInerney was unjustly enriched.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot